

# Family and Medical Leave

## Family and Medical Leave Act of 1993 (FMLA) (29 USC §2601 *et seq.*; 29 CFR Part 825)

### Who is Covered

The Family and Medical Leave Act (FMLA) provides a means for employees to balance their work and family responsibilities by taking unpaid leave for certain reasons. The Act is intended to promote the stability and economic security of families as well as the nation's interest in preserving the integrity of families.

The FMLA applies to any employer in the private sector who engages in commerce, or in any industry or activity affecting commerce, and who has 50 or more employees each working day during at least 20 calendar weeks in the current or preceding calendar year.

The law covers all public agencies (state and local governments) and local education agencies (schools, whether public or private). These employers do not need to meet the "50 employee" test. Title II of FMLA covers most federal employees, who are subject to regulations issued by the Office of Personnel Management.

To be eligible for FMLA leave, an individual must (1) be employed by a covered employer and work at a worksite within 75 miles of which that employer employs at least 50 people; (2) have worked at least 12 months (which do not have to be consecutive) for the employer; and (3) have worked at least 1,250 hours during the 12 months immediately before the date FMLA leave begins.

### Basic Provisions/Requirements

The FMLA provides an entitlement of up to 12 weeks of job-protected, unpaid leave during any 12-month period for the following reasons:

- Birth and care of the employee's child, or placement for adoption or foster care of a child with the employee;
- Care of an immediate family member (spouse, child, parent) who has a serious health condition; or
- Care of the employee's own serious health condition.

If an employee was receiving group health benefits when leave began, an employer must maintain them at the same level and in the same manner during periods of FMLA leave as if the employee had continued to work. Usually, an employee may elect (or the employer may require) the use of any accrued paid leave (vacation, sick, personal, etc.) for periods of unpaid FMLA leave.

*The Employment Law Guide is offered as a public resource. It does not create new legal obligations and it is not a substitute for the U.S. Code, Federal Register, and Code of Federal Regulations as the official sources of applicable law. Every effort has been made to ensure that the information provided is complete and accurate as of the time of publication, and this will continue. Later versions of this Guide will be offered at [www.dol.gov/compliance](http://www.dol.gov/compliance) or by calling our Toll-Free Help Line at 1-866-4-USA-DOL (1-866-487-2365).*

Employees may take FMLA leave in blocks of time less than the full 12 weeks on an intermittent or reduced leave basis when medically necessary. Taking intermittent leave for the placement, adoption, or foster care of a child is subject to the employer's approval. Intermittent leave taken for the birth and care of a child is also subject to the employer's approval except for pregnancy-related leave that would be leave for a serious health condition.

When the need for leave is foreseeable, an employee must give the employer at least 30 days notice, or as much notice as is practicable. When the leave is not foreseeable, the employee must provide such notice as soon as possible.

An employer may require medical certification of a serious health condition from the employee's health care provider. An employer may also require periodic reports during the period of leave of the employee's status and intent to return to work, as well as "fitness-for-duty" certification upon return to work in appropriate situations.

An employee who returns from FMLA leave is entitled to be restored to the same or an equivalent job (defined as one with equivalent pay, benefits, responsibilities, etc.). The employee is not entitled to accrue benefits during periods of unpaid FMLA leave, but the employer must return him or her to employment with the same benefits at the same levels as existed when leave began.

Employers are required to post a notice for employees outlining the basic provisions of FMLA and are subject to a \$100 civil money penalty per offense for willfully failing to post such notice. Employers are prohibited from discriminating against or interfering with employees who take FMLA leave.

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## Employee Rights

The FMLA provides that eligible employees of covered employers have a right to take up to 12 weeks of job-protected leave in any 12-month period for qualifying events without interference or restraint from their employers. The FMLA also gives employees the right to file a complaint with the Wage and Hour Division, file a private lawsuit under the Act (or cause a complaint or lawsuit to be filed), and testify or cooperate in other ways with an investigation or lawsuit without being fired or discriminated against in any other manner.

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## Compliance Assistance Available

The Wage and Hour Division of the Employment Standards Administration administers FMLA. More detailed information, including copies of explanatory brochures, may be obtained by contacting the Wage and Hour Division's local offices ([www.dol.gov/esa/contacts/whd/america2.htm](http://www.dol.gov/esa/contacts/whd/america2.htm)). In addition, the Wage and Hour Division has developed the *eLaws* Family and Medical Leave Act Advisor ([www.dol.gov/eLaws/fmla.htm](http://www.dol.gov/eLaws/fmla.htm)), which is an online resource that answers a variety of commonly asked questions about FMLA, including employee eligibility, valid reasons for leave, notification responsibilities of employers and employees, and rights and benefits of employees. Compliance assistance information is also available from the Wage and Hour Division's Web site ([www.wagehour.dol.gov](http://www.wagehour.dol.gov)). For additional assistance, contact the Wage and Hour Division help line at 1-866-4USWAGE.



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## Penalties/Sanctions

Employees and other persons may file complaints with the Employment Standards Administration (usually through the nearest office of the Wage and Hour Division). The Department of Labor may file suit to ensure compliance and recover damages if a complaint cannot be resolved administratively. Employees also have private rights of action, without involvement of the Department of Labor, to correct violations and recover damages through the courts.

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## Relation to State, Local, and Other Federal Laws

A number of states have family leave statutes. Nothing in the FMLA supersedes a provision of state law that is more beneficial to the employee, and employers must comply with the more beneficial provision. Under some circumstances, an employee with a disability may have rights under the Americans with Disabilities Act.